DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

ELP
Docket No. 4146-00
30 November 2000

[redacted]

Dear [redacted]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 11 March 1988 for four years as a BM3 (E-4). At the time of your reenlistment, you had completed nearly four years of prior active service.

The record reflects that you served without incident until 21 November 1988 when you received nonjudicial punishment (NJP) for use of cocaine. Punishment imposed consisted of forfeitures of $496 per month for two months, reduction in rate to BMSN (E-3), and 45 days of restriction and extra duty.

You were advanced again to BM3 on 15 February 1990 and extended your enlistment for an additional period of three months on 10 April 1990. You served without further incident until 29 November 1991 when you received a second NJP for failure to obey a lawful order or regulation. Punishment imposed was a six month suspended reduction in rate to BMSN. Incident to your discharge, you were advised that you were not recommended for

reenlistment due to obesity. You were honorably discharged on 10 June 1992, assigned an RE-4 reenlistment code, and received involuntary separation pay of $5,961.81.

In August 1991, regulations authorized the payment of involuntary separation pay to enlisted personnel who were involuntarily separated from active duty whose separation was characterized as honorable, and who had completed at least six years of active duty prior to discharge. Regulations also required the assignment of an RE-4 reenlistment code to individuals not recommended for reenlistment or who were ineligible for reenlistment without Chief of Naval Personnel (CHNAVPERS) approval.

The Board noted your letter in support of your application explaining the circumstances surrounding the NJP you received for the use of cocaine, and the contentions that you worked hard to prove you deserved a second chance, and were again advanced to BM3. You claim that you were never informed that you being assigned an RE-4 reenlistment code or the adverse effects it could have, and that you were told by a Coast Guard recruiter that the separation pay you received was an early-out bonus. Your contention that you were not advised of the reason for the RE-4 reenlistment code is not supported by the evidence of record. It appears you were paid involuntary separation pay as authorized by regulation since you had more than eight service of active service when discharged.

Since you had more than eight years of active service, the Board noted you had less than 22 months before reaching the 10-year high year tenure (HYT) limit established by regulation for personnel serving in pay grade E-4. Therefore, you were ineligible to reenlist, even for a minimum two-year contract, without CHNAVPERS approval. Had you been recommended for reenlistment by the command, you could have extended your enlistment up through the HYT limiting date. The Board concluded that obesity, two NJPs, one for using cocaine, and the fact you were approaching HYT limits as an E-4, provided sufficient justification for the command to not recommend your for reenlistment and to assign an RE-4 reenlistment code. The Board thus concluded that the reenlistment code was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board.

In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director